IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH JAIPUR

**J U D G M E N T**

Nand Lal Bijariya V/S United Commercial Bank

S.B. Civil First Appeal No. 53/88 against the judgment and decree dated 18.12.1987 passed by Shri Jagdish Lal, Additional District Judge, Sikar in Civil Suit No. 47/85(24/82).

Date of Judgment ::: October 4 **,2006**

PRESENT

**HON'BLE MR. JUSTICE KHEM CHAND SHARMA**

Mr. Anant Bhandari for the appellant
Mr. G.K. Garg for the respondent

BY THE COURT:

This appeal under Section 96 CPC by the defendants arises out of the judgment and preliminary decree dated 18.12.1987 passed by the learned Additional District Judge, Sikar, whereby the learned Judge has decreed the plaintiff's suit for Rs. 32431.03 with interest.

The plaintiff bank filed a suit against the defendants for recovery of a sum of Rs. 32431.03/- with the averments that defendant appellant Nand Lal took a loan of Rs. 4000/- each in the years 1969 and 1970 for

the purposes of installing a Pump Set in his agricultural land and defendant respondents No. 2 to 4 extended guarantee for repayment of the loan amount. In obtaining the loan the defendant also mortgaged his agricultural land as a measure of security. The appellant also agreed to pay interest @ 9% on the loan amount. On account of failure on the part of the appellant to repay the loan and interest, the plaintiff bank filed a suit against the appellant and and his guarantors, respondents No. 2 to 4.

The defendant appellant, by filing written statement, denied the averments made in the plaint. The defendant respondents No. 2 to 4 who extended guarantee did not file written statement and accordingly ex-parte proceedings were drawn against them.

On the basis of pleadings of the parties, the learned trial court framed issues and at the conclusion of trial decreed the plaintiff's suit for Rs. 32,431.03 along with interest @ 12% p.a. With effect from filing of suit till realisation. Hence the present appeal.

Mr. Bhandari, appearing for the appellant has vehemently contended that it was an agricultural loan for installation of pumping set and therefore, in view

of circulars/directives issued by the Reserve Bank, interest on loan for agricultural purposes, at best may be charged with yearly rests. Charging interest on quarterly rests is nothing but to compel the appellant to pay compound interest, inasmuch as it is not possible to pay the interest except once in a year when he gets income from sale proceeds of the crops. In this back ground, learned counsel submitted that so far as loan for agricultural purposes are concerned the interest must be charged with yearly rests and it may be compounded if the loan/instalment becomes over due. In support of his argument, Mr. Bhandari has relied upon a decision of the Apex Court in Corporation Bank Vs. D.S. Gowda: (1994) 5 SCC 213.

Per contra, Mr. Garg, appearing for the plaintiff respondent has strenuously contended that the defendant appellant has neither averred in his written statement nor adduced any evidence in his defence to the effect that interest should have been charged with yearly rests. Learned counsel has also relied upon a decision of the Apex Court in Central Bank of India Vs. Ravindra (2002) 1 SCC 367, wherein their Lordships while dealing with the question of charging interest on agricultural

borrowings have recorded few incidental observations in para 55 of the Judgment. Learned counsel has relied upon observation No.6 which may be quoted below:

> "Agricultural borrowings are to be treated on a pedestal different from others. Charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six-montly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong."

I have considered the rival submissions and gone through the case laws cited at the bar. In the case of agricultural loans, the Reserve Bank of India has issued circulars on various occasions which do not permit banks to charge compound interest with quarterly rests. The circulars provide that agricultural advances should not be treated at par with commercial loans insofar as rate of interest thereon is concerned because the farmers do not have any regular source of income except sale proceeds of their crops, which income they get once a year. The Reserve Bank has shown concern for the farmers by directing all banking institutions to so regulate the recovery of interest as to coincide with the point of time when the farms are fluid. The Reserve Bank has emphasized that interest

should be charged once a year to coincide with the point of time when farmers are fluid and interest on current dues should not be compounded although it may be done when the advance/instalments becomes overdue. Considering the circulars/directives concerning loans for agricultural purposes, their Lordships in in Corporation Bank Vs. DS Gowda (supra) held that at best interest may be charged with years rests and may be compounded if the loan/instalment becomes overdue. Gowda's case was considered in Central Bank of India Vs. Ravindra (supra) and it was held that charging and capitalisation of interest on agricultural loans cannot be permitted in India except on annual or six-montly rests depending on the rotation of crops in the area to which the agriculturist borrowers belong. In the instant case, as stated above the defendant appellant has not led any evidence to show that it was an agricultural loan and therefore, at best, the interest must be charged with half yearly rests. That apart, the defendant appellant has not even pleaded any where that rotation of crop in his hield is yearly or half yearly. In the present case the defendant had agreed to pay loan amount with interest on half yearly periodical

rests. In this view of the matter, the argument of learned counsel for the appellant that periodical rests should have been yeary has no force and hence rejected.

Learned counsel for the defendant appellant next contended that the trial court has committed serious error in allowing interest @ 12% p.a. on decreetal amount from the date of filing of suit till realization. Learned counsel submitted that it was a suit under O. XXXIV CPC and therefore, so far as question of interest payable in mortgage suit is concerned, it is governed by Order 34 Rule 11 of the Civil Procedure Code and not by S. 34 of the Code. In support of his argument, learned counsel has relied upon a decision of the Supreme Court in Everest Industrial Corporation and others Vs. Gujarat State Financial Corporation (AIR 1987 SC 1950).

I have considered the above argument and gone through the case law cited at the bar. In the above case relied upon by the counsel for the appellant, their Lordships of the Supreme Court considered the question whether the rate of interest chargeable on the amount payable under an order passed under S. 32 of the State Financial Corporations Act, 1951 from the date of

the said order is governed by Sec. 34 of the Code of Civil Procedure, 1908 or whether it is payable at the contractual rate ? Having considered the above question, their Lordships held as under:

> " If as held by this Court, the proceedings instituted under Sec. 31 (1) of the Act is something akin to an application for attachment of property in execution of a decree at a stage posterior to the passing of the decree no question of passing any order under Sec. 34 of the Code would arise since Sec. 34 of the Code would be applicable only at the stage of the passing of the decree and not to any stage posterior to the decree. It may also be mentioned here that even under the Code the question of interest payable in mortgage suits filed in civil courts is governed by O.34 R.11 of the Code and not by S. 34 of the Code which may be applicable only to cases of personal decrees passed under O.34, R.6 of the Code. The High Court was right in holding that interest would be payable on the principal amount due in accordance with the terms of the agreement between the parties till the entire amount due was paid as per the order passed under Sec. 32 of the Act."

The present case is fully covered by the above decision of the Apex Court and it is held that Section 34 of the Code of Civil Procedure would not be applicable to this case. Instead clause (b) of O.34, R.11 CPC would be applicable, which provides that

subsequent interest up to the date of realisation or actual payment on the aggregate of the principal sums specified in clause (a) as calculated in accordance with that clause at such rate as the court deems reasonable. Thus, keeping in view the facts and circumstances of the case and the provisions of law, I consider it appropriate to reduce the rate of interest from 12% p.a. to 6% p.a. Consequently, I hold that plaintiff respondent would be entitled to receive interest @ 6% p.a. instead 12% with effect from the date of filing of suit till realization of the decreetal amount.

Resultantly, the judgment of the trial court is upheld with the above modification as to the rate of interest.

The parties are left to bear their own costs.

(Khem Chand Sharma), J.

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